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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case) (Jointly Administered)

**REORGANIZED DEBTORS' MOTION
PURSUANT TO BANKRUPTCY CODE
SECTIONS 105(a) AND 107(b) AND
BANKRUPTCY RULE 9018 FOR ENTRY
OF AN ORDER AUTHORIZING THE
FILING UNDER SEAL OF (1)
CONFIDENTIAL SETTLEMENT AND (2)
MOTION FOR ORDER APPROVING
SAME**

[No Hearing Requested]

1 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the
2 “**Utility**”), as debtors and reorganized debtors (collectively, “**PG&E**” or the “**Reorganized**
3 **Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this
4 Motion (the “**Motion to Seal**”), pursuant to sections 105(a) and 107(b) of title 11 of the United
5 States Code (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure
6 (the “**Bankruptcy Rules**”), Rule 1001-2(a) of the Bankruptcy Local Rules for the United States
7 District Court for the Northern District of California (the “**Bankruptcy Local Rules**”) and the *New*
8 *District Wide Procedures for Electronically Filing Sealed and Redacted Documents* adopted by the
9 United States Bankruptcy Court for the Northern District of California (the “**Local Procedures**”),
10 for entry of an order authorizing the Reorganized Debtors to file the Agreement (as defined below)
11 and the Motion for its approval, including supporting declaration(s) (the “**Approval Motion**”)
12 under seal and (ii) directing that the Agreement and the Approval Motion shall remain under seal
13 and confidential and not be made available to anyone (except for the parties identified in the
14 immediately following sentence) without the consent of the Reorganized Debtors and the
15 Counterparty (as defined below) or further order from the Court. The Reorganized Debtors shall
16 provide the Approval Motion and Agreement to the Court and the Office of the United States
17 Trustee for the Northern District of California (the “**U.S. Trustee**”) on a confidential basis.

18 In support of the Motion to Seal, the Reorganized Debtors respectfully refer to the
19 Approval Motion, filed contemporaneously herewith. A proposed form of order granting the relief
20 requested herein is submitted concurrently herewith in accordance with the Local Procedures (the
21 “**Proposed Order**”).
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. JURISDICTION**

3 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and
4 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General
5 Order 24 (N.D. Cal.), and Bankruptcy Local Rule 5011-1(a). This is a core proceeding pursuant to
6 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

7 **II. BACKGROUND**

8 On June 20, 2020, the Court entered an Order [Docket No. 8053] (the “**Confirmation**
9 **Order**”) confirming the *Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of*
10 *Reorganization Dated June 19, 2020* [Docket No. 8048] (as may be modified, supplemented, or
11 amended from time to time, and together with all schedules and exhibits thereto, the “**Plan**”). The
12 Plan became effective on July 1, 2020 [Docket No. 8252].

13 After much negotiation, the Reorganized Debtors and a certain party (the
14 “**Counterparty**”) have reached an agreement to resolve a dispute which affects the implementation
15 of the Plan. The Reorganized Debtors and the Counterparty have documented their agreement (the
16 “**Agreement**”), together with the Approval Motion, both of which are filed concurrently herewith
17 under seal pursuant to the Local Procedures.

18 Because the Agreement includes sensitive and confidential commercial information,
19 the Reorganized Debtors and the Counterparty have agreed that it is essential that the Agreement
20 would not be publicly disclosed. The Counterparty has, however, consented to the Reorganized
21 Debtors filing the Agreement and Approval Motion under seal with the Court and providing the
22 Agreement and Approval Motion to the U.S. Trustee on a confidential basis.

23 **III. BASIS FOR RELIEF REQUESTED**

24 Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order . . . that
25 is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 107(b)
26 further provides:

27 On request of a party in interest, the bankruptcy court *shall*, and on the
28 bankruptcy court’s own motion, the bankruptcy court may—

1 (1) protect an entity with respect to a trade
2 secret or *confidential* research, development,
3 or *commercial information*

4 11 U.S.C. § 107(b) (emphasis added). Parsing the language of 107(b), courts have emphasized that
5 once the court determines that the information falls within one of the enumerated 107(b) categories,
6 the court “is *required* to protect [the movant] and has no discretion to deny the application”. *In re*
7 *Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994). In addition, section 107(b) expressly authorizes
8 the court to grant protection, where warranted, to the confidential commercial information of “an
9 entity”. 11 U.S.C. § 107(b). Unlike its counterpart Rule 26(c) of the Federal Rules of Civil Procedure,
10 section 107(b) of the Bankruptcy Code does not require the movant to demonstrate “good cause”.
11 *Orion Pictures Corp.*, 21 F.3d at 28. Indeed, under section 107(b) the movant need only show “that
12 the information it [seeks] to seal [is] ‘confidential’ and ‘commercial’ in nature”. *Id.* at 27. Commercial
13 information is broadly defined to include information that would produce “an unfair advantage to
14 competitors by providing them information as to the commercial operations” of the entity seeking
15 protection, *see In re Itel Corp.*, 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982), or information that could
16 have a “chilling effect on [business] negotiations, ultimately affecting the viability of Debtors”, *see In*
17 *re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011) (quoting *In re Lomas Fin. Corp.*, No.
18 90 Civ. 7827 (LLS), 1991 WL 21231, at *2 (S.D.N.Y. Feb. 11, 1991)). Significantly, commercial
19 information need not rise to the level of a trade secret to warrant section 107(b)’s protection. *See*
20 *Orion Pictures Corp.*, 21 F.3d at 28 (finding that “§ 107(b) is carefully drafted to avoid merging ‘trade
21 secrets’ with ‘confidential commercial information’”).

22 The Bankruptcy Rules similarly authorize the Court to “make any order which justice
23 requires (1) to protect the estate or any entity in respect of a trade secret or other *confidential* research,
24 development, or *commercial information*.” Fed. R. Bankr. P. 9018 (emphasis added), *see also In re*
25 *Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (“[T]he whole point of [Bankruptcy
26 Rule 9018] is to protect business entities from disclosure of information that could reasonably be
27 expected to cause the entity commercial injury”). Finally, Local Procedures require that a request for
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1 seal is narrowly tailored to sealable materials. *New District Wide Procedures For Electronically*
2 *Filing Sealed and Redacted Documents.*

3 The Reorganized Debtors respectfully submit that the entire subject matter of the
4 Agreement is confidential in nature, and its public disclosure would cause commercial injury to the
5 Reorganized Debtors' estates and the reorganization process. Specifically, disclosure of the terms of
6 the resolution provided by the Agreement could adversely affect the Reorganized Debtors'
7 relationships with other parties who are in a similar relationship to the Reorganized Debtors as the
8 Counterparty. Because the Agreement contains confidential commercial information within the scope
9 of section 107(b), this Court should grant the Reorganized Debtors' request. The same considerations
10 apply equally to the Approval Motion.

11 The Agreement is the product of arm's length, extensive and good faith negotiations,
12 and due to the commercially sensitive nature of the contents of the Agreement, the public disclosure
13 of the Agreement would likely cause substantial harm to the Debtors and the Counterparty.
14 Accordingly, the Debtors and the Counterparty have agreed to keep the Agreement confidential.

15 **IV. NOTICE**

16 Notice of this Motion to Seal will be provided to (i) the Office of the United States
17 Trustee for Region 17 (Attn: Andrew Vara, Esq. and Timothy Laffredi, Esq.); (ii) counsel to the
18 Official Committee of Unsecured Creditors; (iii) counsel to the Official Committee of Tort Claimants;
19 (iv) the Securities and Exchange Commission; (v) the Internal Revenue Service; (vi) the Office of the
20 California Attorney General; (vii) the California Public Utilities Commission; (viii) the Nuclear
21 Regulatory Commission; (ix) the Federal Energy Regulatory Commission; (x) the Office of the United
22 States Attorney for the Northern District of California; (xi) counsel for the agent under the Debtors'
23 debtor-in-possession financing facilities; (xii) counsel for the Counterparty; and (xiii) those persons
24 who have formally appeared in these Chapter 11 Cases and requested service pursuant to Bankruptcy
25 Rule 2002 (collectively, the "**Notice Parties**"). The Reorganized Debtors respectfully submit that no
26 further notice is required.

27 No previous request for the relief sought herein has been made by the Reorganized
28 Debtors.

1 WHEREFORE the Reorganized Debtors respectfully request entry of an order granting
2 the relief requested herein and such other and further relief as the Court may deem just and appropriate.
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4 Dated: September 25, 2020

5 **WEIL, GOTSHAL & MANGES LLP**
6 **KELLER BENVENUTTI KIM LLP**

7 /s/ Theodore E. Tsekerides

8 Theodore E. Tsekerides

9 *Attorneys for Debtors and Reorganized Debtors*
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